



The relief described hereinbelow is SO ORDERED.

Signed December 06, 2004.

A handwritten signature in black ink, reading "Robert D. Berger", is written over a horizontal line.

ROBERT D. BERGER  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

**In Re:**

**LARRY LEE WOODY,  
Debtor.**

**Case No. 02-21662  
Chapter 7**

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**LARRY LEE WOODY,  
Plaintiff,**

**v.**

**Adv. No. 02-6095**

**U.S. DEPARTMENT OF JUSTICE,  
Defendant.**

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**MEMORANDUM OPINION AND ORDER DENYING  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

This student loan dischargeability proceeding is before the Court on the Motion for Summary Judgment filed by the Department of Justice ("DOJ").<sup>1</sup> The pleadings do not contest the core nature of this proceeding. The Court finds that this proceeding is core under 28 U.S.C.

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<sup>1</sup> The defendant's Motion for Summary Judgment (Doc. # 33) was filed on March 22, 2004. The plaintiff's Response to Defendant's Motion for Summary Judgment (Doc. # 42) was filed on April 14, 2004. The plaintiff, Mr. Larry Lee Woody, appears by counsel Kenneth M. Gay of Lenexa, Kansas. The defendant, United States Department of Justice, appears by Melanie D. Caro, Assistant United States Attorney, Kansas City, Kansas.

§ 157 and the Court has jurisdiction under 28 U.S.C. §§ 1334 and 157.

The plaintiff, Larry Lee Woody (“Mr. Woody”), filed his petition for Chapter 7 relief on May 14, 2002. On October 7, 2002, he filed the underlying complaint to determine the dischargeability of certain obligations resulting from Health Education Assistance Loans (“HEAL”). The issue, as framed by both parties, is whether Mr. Woody is entitled to discharge his HEAL student loans pursuant to 42 U.S.C. § 292f(g) (conditions for discharge of HEAL student loan in bankruptcy) because excepting them from discharge would be unconscionable. The Court, having reviewed the Motion for Summary Judgment and the memoranda submitted in support thereof, as well as the memorandum submitted in opposition, finds that genuine issues of material fact remain for resolution at trial. The DOJ’s Motion for Summary Judgment is therefore denied.

### **Facts**

The DOJ’s Amended Memorandum in Support of Defendant’s Motion for Summary Judgment (Doc. # 35) sets forth a statement of material facts as to which it contends no genuine issues exist. Mr. Woody adopts the DOJ’s statement of undisputed material facts with one immaterial exception.<sup>2</sup> However, in the last sentence of his “Response to Defendant’s Motion for Summary Judgment,” Mr. Woody also requests summary judgment. District of Kansas Local Bankruptcy Rule 7056.1 requires that motions for summary judgment be supported by a memorandum or brief that begins with a concise statement of material facts as to which the movant contends no genuine issues exist. Although Mr. Woody references many additional facts in the “Arguments and Authorities” section of his Response, he fails to set forth a specific section containing the concise statement required by D. Kan. LBR 7056.1. Because Mr.

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<sup>2</sup> Mr. Woody notes that he is not a “doctor.”

Woody's failed to comply with local rules, the Court will not consider his Response to Defendant's Motion for Summary Judgment as a cross-motion for summary judgment. Rather, the Court will only consider those facts set forth in the DOJ's Memorandum in Support of Summary Judgment to which the parties agree no genuine issues of material fact exist.

The following facts are undisputed:

On January 17, 1983, Mr. Woody received a HEAL student loan in connection with his studies at Cleveland Chiropractic College. As of February 17, 2004, he owed the DOJ \$17,626.85 on a judgment taken after he defaulted on the original HEAL obligation of \$4,700.00. Prior to his default, he made only one payment of \$484.48. Subsequent to his default, Mr. Woody has made additional payments on the judgment totaling \$3,025.00.

Although Mr. Woody holds a Bachelor of Science degree from Northwest Missouri State University with a major in accounting and a minor in general business, he has been employed only twice in full-time permanent positions between 1983 and 2001. Each position was terminated after approximately one year. Since February 2001, Mr. Woody has been a full-time seasonal employee of the Internal Revenue Service. Mr. Woody was in unpaid "non-work" status with the Internal Revenue Service for approximately 6 months during 2002 and 2003. During both unpaid "non-work" periods, he collected unemployment compensation and did not seek substantive employment in either a related or unrelated field. However, with certain exceptions, the IRS would have permitted Mr. Woody to engage in outside employment without prior permission while in unpaid "non-work" status or while working for the IRS if accommodations could be made for both positions.

Mr. Woody's total adjusted gross income was \$17,428.00 in 2001, \$19,030.00 in 2002, and \$10,614.82 through May 31, 2003. His total monthly living expenses are approximately

\$1,660.00 per month or \$19,920.00 per year, although it appears this amount does not reflect any monthly payment toward \$993.02 of credit card debt.

Mr. Woody suffered a heart attack on March 15, 2000, and suffers from heart disease, which is managed through physician oversight, drug therapy, and risk-factor management. However, Mr. Woody's health is such that he cannot work more than 40 hours per week. The facts before the Court do not otherwise indicate Mr. Woody's age, accumulated wealth, or number of dependents, if any, nor do they indicate the extent to which, if at all, Mr. Woody's current situation is likely to continue or improve.

### **Discussion**

Rule 56 of the Federal Rules of Civil Procedure governs summary judgment and is made applicable to adversary proceedings by Rule 7056 of the Federal Rules of Bankruptcy Procedure. Rule 56(c) makes summary judgment appropriate when, after consideration of the record, the court determines that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."<sup>3</sup> To determine whether any genuine issues of material fact exist, a court must construe the record liberally in favor of the party opposing the summary judgment.<sup>4</sup> An issue is "genuine" if sufficient evidence exists on each side "so that a rational trier of fact could resolve the issue either way" and "[a]n issue is 'material' if under the substantive law it is essential to the proper disposition of the claim."<sup>5</sup> The moving party has the burden to establish that he or she is entitled to summary judgment.<sup>6</sup>

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<sup>3</sup> FED. R. CIV. P. 56(c).

<sup>4</sup> *McKibben v. Chubb*, 840 F.2d 1525, 1528 (10th Cir. 1988) (citation omitted).

<sup>5</sup> *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998).

<sup>6</sup> *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

The question before the Court is whether Mr. Woody may discharge his HEAL derived obligation under 42 U.S.C. § 292f(g). To discharge a debt under § 292f(g), a debtor must show that (1) seven years have passed from the time repayment began; (2) not discharging the loan would be unconscionable; and (3) the Secretary of Health and Human Services has waived certain rights.<sup>7</sup> The parties do not dispute that seven years have passed or that the Secretary has not waived certain rights. Therefore, the sole issue remaining is whether not discharging Mr. Woody's obligation to the DOJ would be "unconscionable."

Congress has not defined "unconscionable" as used in § 292f(g).<sup>8</sup> However, courts have interpreted the standard to be "excessive"; "exorbitant"; "lying outside the limits of what is reasonable or acceptable"; "shockingly unfair, harsh, or unjust"; or "outrageous."<sup>9</sup> To determine whether not discharging a HEAL obligation is unconscionable, courts must focus on the "totality of the facts and circumstances surrounding the debtor and the obligation."<sup>10</sup> To evaluate the totality of the facts and circumstances, courts look to the following, although not exclusive, factors: income, earning ability, health, educational background, dependents, age, accumulated wealth, and whether the debtor has a professional degree.<sup>11</sup> Courts have generally agreed that "unconscionability" requires a greater showing than "undue hardship" under 11 U.S.C. § 523(a)(8).<sup>12</sup>

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<sup>7</sup> 42 U.S.C. § 292f(g).

<sup>8</sup> *United States Department of Health & Human Services v. Smitley*, 347 F.3d 109, 116 (4th Cir. 2003).

<sup>9</sup> *See id.* at 116 (citations omitted); *see also Rice v. United States*, 78 F.3d 1144, 1148 (6th Cir. 1998).

<sup>10</sup> *Id.* at 117 (citations omitted).

<sup>11</sup> *Id.* (citations omitted); *see also Cothran v. United States Public Health Services/Health Resources & Services Administration*, 226 B.R. 460, 463 (Bankr. E.D. Okla. 1998).

<sup>12</sup> *Id.* at 116 (citing *Rice*, 78 F.3d at 1148); *see also United States v. Wood*, 925 F.2d 1580, 1583 (7th Cir. 1991).

As an “unconscionability” determination is factually driven and each debtor’s situation is unique, this Court believes an “unconscionability” analysis is particularly well-suited for disposition in a trial setting. The Court recognizes there are times when disposition by summary judgment motion is appropriate. However, such instances are rare and, minimally, will require undisputed facts sufficient for the Court to evaluate each debtor’s unique circumstances in their totality.

In the present case, the DOJ’s motion for summary judgment does not set forth those facts necessary for the Court to make its determination. Although this Court has some sense of Mr. Woody’s financial status, health, and work history, the absence from the record of other information such as his age, the amount of any accumulated wealth he may have, and the number of his dependants, if any, prevent this Court from properly evaluating the totality of the facts and circumstances unique to Mr. Woody and determining whether Mr. Woody’s current situation is likely to continue or improve. As a result, the DOJ has failed to establish that it is entitled to summary judgment.

#### Conclusion

For the reasons set forth above, the DOJ has failed to establish that it is entitled to summary judgment. The DOJ’s Motion for Summary Judgment is therefore denied. A supplemental order setting this matter for evidentiary hearing will be entered forthwith.

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ROBERT D. BERGER  
U.S. BANKRUPTCY JUDGE  
DISTRICT OF KANSAS